

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: J. Roger & Ilona M. Cherewatti, c/o William Canon

Date application filed with the Town Clerk: January 30, 2007

Nature of request: A Special Permit to create a flag lot under Sections 3.2832 and 6.3 of the Zoning Bylaw

Address: 575 North East Street (Map 9C, Parcel 28, R-O, R-LD/FC, FPC Zoning District)

Legal notice: Published on February 7 & 14, 2007 in the Daily Hampshire Gazette and sent to abutters on February 15, 2007.

Board members: Ted Rising, Hilda Greenbaum and Jane Ashby

Submissions:

The petitioner submitted a site plan of the proposed flag lot drawn by Holmberg & Howe dated 1/25/07, a letter from Mr. Canon giving some background information dated 1/29/07, and a shared driveway agreement, dated 2/15/07.

At the hearing, the petitioner submitted a revised site plan, dated 2/21/07, showing the correct FPC boundaries and a turnaround area in front of the existing garage.

The Planning Department zoning assistant submitted a memo dated 2/15/07 describing the Zoning Bylaw requirements for the 3 zoning districts plus an overlay district of the proposed flag lot.

Site Visit: February 21, 2007

The Board met at the site with Bill Canon, landscape architect representing the petitioners. They observed the following:

- A 19th century Federal style brick farmhouse, surrounded by many acres of farmland protected under the State Agricultural Preservation Program (APR);
- Additional protected farmland across North East Street, resulting in a historical rural setting;
- A long, straight driveway leading up to the north side of the house; half of the common driveway is located on the adjacent frontage lot;
- A parking area between the house and detached garage that currently has space for at least four vehicles;
- A one-story wooden shed attached to the house and a small shed next to the garage, both of which will be removed;
- Five old sugar maple trees surrounding the house, located within the proposed flag lot area;
- Two additional maples along the shared driveway located on the adjacent frontage lot;
- A small stream and the Flood Prone Conservancy District north of the driveway, affecting

the driveway only at the northerly curb cut;

- The “pole” of the flag lot located to the north of the stream;
- The location of the proposed septic system behind the house.

Public Hearing: February 22, 2007

William Canon, landscape architect, presented the petition on behalf of the applicants. He gave the following information:

- The applicants are applying for a Special Permit to create a flag lot on North East Street;
- The frontage for the lot is 40 feet, located north of the stream that flows through the property;
- The applicants would like to use the existing drive that currently serves the farmhouse on the property and the entire surrounding farmland;
- The driveway will also provide access to the new house to be built behind the farmhouse (to the east);
- The new house will be built on a lot recently created by the Approval Not Required (ANR) process by the Planning Board;
- The initial site plan was incorrect in terms of the size of the FPC zone associated with the stream; the correct setback from the stream is 25 feet, which leaves 99% of the driveway outside of the FPC zone;
- The site plan submitted at the hearing also shows the extension of the driveway onto the adjacent land to the east, plus the parking/turnaround area in front of the garage;
- The proposed flag lot meets all the dimensional requirements of the Zoning Bylaw; that is:
 - The area of the lot, exclusive of the pole, is no larger than 30,000 square feet, as required by Section 3.2832 of the Bylaw;
 - The setbacks meet the requirements of the R-O district where the house is located; the front setback is 30 feet (25 feet required) and the southern side yard setback is 25 feet (25 feet required);
 - The street frontage is 40 feet and the access strip is 40 feet wide its entire length (Section 6.33);
 - The length of the strip is 129 feet, less than the 400 foot maximum (Section 6.33);
 - The width of the proposed building area is 185 feet, greater than the frontage required in the R-O district where the house is located (Section 6.34);
 - The building area of the proposed flag lot is capable of containing a circle whose diameter is greater than the 150 feet frontage required in the district where the flag lot's frontage is located (Section 6.35); the circle shown on the submitted site plan is about 160 feet.

Mr. Rising asked how the driveway will continue to the east off the property. Mr. Canon replied that after the 26 foot wide turnaround by the existing garage, the new driveway will continue straight east to a turn-around in front of the proposed new house, then continue on in a north-easterly direction to curve around the north side of the proposed new barn, several hundred feet behind the existing farmhouse and proposed flag lot. The existing dirt farm road which meanders around to the south-east of the existing farmhouse will be abandoned.

Ms. Greenbaum noted that the Board has not heard from the Fire Department concerning the turn-around for emergency vehicles. Although there were five cars parked in front of the garage for the site visit, the Fire Department has the final word on driveway design.

Bonnie Weeks, Building Commissioner, said that the plan shows a 20-foot easement for the driveway, and the Bylaw (Section 7.712) states that the driveway shall be 16 feet wide, with 2 foot wide shoulders.

Mr. Canon said that the driveway will be gravel, with a top coat of 2-4 inches of stone. Crushed stone is unusual in that it stays in place. The curb cuts ("apron") are paved and will remain as is.

Ms. Weeks commented that coverage for the lot should be calculated. Mr. Canon said that he would supply it to the Board.

Mr. Canon said that because the sewage system must meet the standards of Title 5, the system will be replaced and relocated to the south-east corner of the flag lot.

Ms. Greenbaum commented that the sugar maple trees in the front and south sides of the house are historic as well, and she does not want the sewage system to compromise the trees. Mr. Canon assured the Board that the trees around the house will be preserved, and if the proposed septic system location poses a danger to the trees, it will be moved further to the east.

Jonathan Tucker, Amherst Planning Director, stated that the Historical Preservation Agreement with the Cherewatti family deals with the "bride and groom" sugar maple trees at the corners of the house in front. Ms. Greenbaum responded that the sugar maples are quite old, and should be replaced with other sugar maples when they die. The Board agreed that this should be a condition of the permit if it is approved.

Ms. Greenbaum asked about exterior lighting – along the driveway or on the house. Mr. Canon replied that he doesn't think that any exterior lighting is planned for the flag lot, except above the entrances to the house, and they are 60-watt incandescent bulbs.

One person from the public spoke, Maureen Marino of 651 North East Street. She inquired about the size of the house which is proposed to be built to the east of the existing farmhouse. The Board replied that the current hearing deals only with the creation of a flag lot that meets the requirement of the Zoning Bylaw.

Ms. Greenbaum made a motion to close the evidentiary portion of the hearing. Ms. Ashby seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board noted that the petitioner had met all the requirements of Sections 3.2832 and 6.3 of the Zoning Bylaw dealing with flag lots (see above.)

The Board agreed that most of the requirements of Section 7.7 of the Zoning Bylaw dealing with access requirements and driveways have been met. That is:

- Access is unimpeded over an easement and a common driveway agreement has been submitted (Section 7.701);
- The common driveway has less than a 5% grade (Section 7.702);
- The driveway is not public and does not provide lot frontage (Section 7.710);
- The length of the common driveway is less than 300 feet (Section 7.7130);
- There will be access for emergency vehicles (Section 7.718).

However, the Board noted that the proposed driveway needs to be reviewed by the Fire Department in terms of width and turnaround for emergency vehicles. The shared driveway agreement is acceptable, and the Board agreed that they could vote on the application and review/approve the site plan with driveway and exterior lighting at a future public meeting of the ZBA.

The Board concentrated on conditions and findings for a Special Permit during the remainder of the public meeting.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the rural farm neighborhood and is compatible with existing uses because a flag lot leaves extensive open farm acreage surrounding it, and the proposal preserves an important historic farmhouse.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because it preserves a single family farmhouse in a farming neighborhood without changing the environs.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the land is open, sight lines are unobstructed, and the driveway is safe for the proposed use even without the proposed improvements.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because a new septic system is to be installed and the driveway will be widened and improved with crushed stone. Emergency vehicles will be able to access the house on the flag lot as well as a proposed new house east of the farmhouse.

10.386 – The proposal ensures that it is in conformance with the Parking regulations of the town because there is adequate parking on the lot with the two car garage and several spaces outside the house.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because a new septic system will be installed. The water line is already installed and the owner will be responsible for refuse/recyclables.

10.391 – The proposal protects unique or important natural, historic or scenic features because it will help preserve the historic pre-1815 Benjamin Kimball Federal farmhouse.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the large older the sugar maple trees that are an important part of the history of the house will be preserved to the extent feasible. An Historic Preservation Agreement between the Town and the owner will run with the property and help to preserve the landscape immediately around the house.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the Board will impose a condition ensuring that lighting will be downcast and minimal for the final plan submitted to the Board at a business meeting.

10.395 and 10.397 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the house and outlying garage will be retained. A small outlying shed and a deteriorated wooden ell on the rear of the house will be removed. The vicinity is currently typified by many acres of open farmland, preserved, with hiking/skiing trails to the south. There are very few existing adjacent buildings.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw

because it helps to protect an important aspect of the history of the Town of Amherst and the general welfare of the inhabitants.

Public Meeting – Zoning Board Decision

Ms. Greenbaum made a motion to APPROVE the proposal to create a flag log, with conditions.

Mr. Rising seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to create a flag lot under Sections 3.2832 and 6.3 of the Zoning Bylaw at 575 North East Street, (Map 9C/Parcel 28, R-O, R-LD/FC, FPC Zoning Districts), as requested in the application filed by Roger and Ilona Cherewatti, with conditions.

Edward Rising

Hilda Greenbaum

Jane Ashby

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to create a flag lot under Sections 3.2832 and 6.3 of the Zoning Bylaw at 575 North East Street, (Map 9C/Parcel 28, R-O, R-LD/FC, FPC Zoning Districts), as requested in the application filed by Roger and Ilona Cherewatti, subject to the following conditions:

1. The final configuration of the lot, plus plans for the common driveway, turnaround area and exterior lighting shall be submitted to the Board for approval at a public meeting prior to issuance of the certificate of occupancy.
2. External lighting shall be downcast.
3. The flag lot and farmhouse shall be limited to single family occupancy.
4. Maintenance of the common driveway shall be as described in the driveway maintenance agreement approved by the Board at the public meeting on February 22, 2007.
5. If any of the sugar maple trees within the flag lot negatively impacted by building or septic system changes, they shall be replaced with new sugar maple trees, planted in a similar location.

EDWARD RISING, Chair
Amherst Zoning Board of Appeals

DATE